REMARKS

This is in full and timely response to the above-identified Office Action. The above listing of the claims supersedes any previous listing. Favorable reexamination and reconsideration is respectfully requested in view of the preceding amendments and the following remarks.

Claim Amendments

In this response claim 22 has been amended to assume independent form. This combination of elements is both novel and non-obvious for the reasons advanced below.

Rejections under 35 USC § 103

1) The rejection of claims 19 and 27-29 under 35 USC § 103(a) as being unpatentable over Ko in view of Marshall et al. is respectfully traversed.

The Marshall et al. reference is cited to overcome the admitted shortcoming that Ko fails to teach the fiber aggregate comprising intertwined fibers and vertically oriented fibers. The rejection makes reference to column 9, lines 39-41, to disclose a fiber mat comprising intertwined and vertically oriented fibers. However, the rejection fails to take into consideration the whole disclosure of the Marshall et al. reference as is statutorily required.

The rejection picks the required disclosure and ignores the remainder. Column 9, lines 35-41 discloses:

> The first portion of outer seed mat formation process is diagrammatically illustrated in

> FIG. 2 wherein it is seen that fiber layer 14 is formed on conveyor screen 23 by depositing fiber 19, including plastic fiber if used, on the screen from fiber hopper 24. This fiber layer is deposited by known methods to create fiber entanglement to some degree in both horizontal and vertical directions.

Namely, what is disclosed in this portion is that ***in the seed mat***, the fibers are entangled in the horizontal and vertical directions. Since the fiber layer 14 is formed on the conveyor screen 23, which does not constitute the seed mat, it is impossible to entangle the fibers forming the fiber layer 14 with other layer.

Claim 1 calls for the fiber aggregate outer layer to comprise intertwined fibers and vertically oriented fibers which ***enter into the concrete block*** and ***interconnect the fiber aggregate outer layer*** (of the concrete block) to the outer surface of the concrete block. This structural interconnection is not suggested by the disclosure of either Ko or Marshal et al.

Further, Marshall et al. is a seed mat which as illustrated in Fig. 1 and which comprises no less than 7 layers - not just the one that is comprised of fibers. That is to say, column 5, lines 5-10 discloses:

> Our seed mat generally comprises bottom scrim layer 11, supporting seed layer 12 with fiber layer 14 thereabove and an upper mesh layer 15 on the upper surface of the fiber layer. Optionally the seed mat may have lowermost

bottom mesh layer 10, additive layer 13 of beneficiating biological materials and uppermost scrim layer 16.

From Fig. 1 it is clear that the fiber layer 14 upon which the rejection relies, is deliberately sandwiched between a number of other layers so as to provide a predetermined function. These additional layers cannot be ignored for the sake of rejection. Indeed, subsequent disclosure would suggest that none of the fibers are oriented or exposed in a direction that would allow the claimed interconnection.

Indeed, if an accurate transfer of teachings from Marshall et al. were to be envisaged, then not just the fiber layer 14 but a all of the other layers which are disclosed would have to be considered. After all, the Marshall et al. disclosure is directed to a seed mat. To leave the seed containing layer 12 off and just move the fiber mat, would not be seen as possible in light of the disclosure of the Marshall et al. reference taken as a whole. In the end, what is the point of a seed mat if the seed containing layer is omitted?

Inasmuch as there is at least one layer above and at least one layer below the fiber layer (which is relied upon for the sake of rejection), including an additive layer which contains additives which are frequently mentioned throughout the disclosure of Marshall et al., it is not seen that any of the fibers of the fiber mat would be rationally expected to be exposed to the degree that they would be able to penetrate into a porous concrete block in a manner that securely holds the mat on the block. Indeed, without a full working knowledge of the claimed subject matter, the rejection as it is proposed would not seem to be possible.

Reconsideration and withdrawal of the rejection is therefore seen necessary.

2) The rejection of claims 20 and 21 under 35 USC § 103(a) as being unpatentable over Ko in view of Marshall et al. and further in Proctor, is respectfully traversed.

This rejection relies on Proctor to suggest spraying natural rubber on the mat shaped fiber aggregate. However, as noted above, the hypothetical person of ordinary skill cannot be expected to arbitrarily pull the fiber mat 14 out of the 7 layer structure disclosed in Marshall et al. and then spray rubber thereon (as per Proctor) without a very good reason. This reason is not forthcoming from the rejection as it has been advanced.

Spraying rubber on the mat would not be envisaged in light of the types of use the seed mat of Marshall et al. is intended. Indeed, it could be well expected that spraying natural rubber on the fiber mat of Marshall et al. would tend to defeat the very expectation that the fiber mat structure would create a more friendly environment for seed germination and the establishment of young seedlings than does the earth itself. The fact that the claims call for this would seem to be the only source of suggestion of providing such a natural rubber coating. Even then, it would seem nearly impossible to spray the fiber mat 14 after the seed mat was fully constructed and the other 6 layers were combined with the fiber based one.

The claims call for the fibers to enter into the concrete and establish a connection between the fiber layer and the concrete block. By the Examiner's very admission, Ko does not disclose this and Marshall et al. and Proctor must be turned to provide

suggestion to the hypothetical person of ordinary skill. However, this requires the omission of major portions of the Marshall et al. arrangement be made before any of the teachings of Marshall et al., or Proctor, could be even vaguely considered for transfer to those of the primary reference to Ko.

For at least these reasons it is submitted that the rejection should be withdrawn.

3) The rejection of claims 22 and 23 under 35 USC § 103(a) as being unpatentable over Ko in view of Marshall et al. and further in view of Marzolin is respectfully traversed.

The application of Marzolin to suggest the claimed concrete characteristics is noted. However, it would not be considered for the purposes of assisting in the infiltration of fibers into the concrete and most certainly does not assist in the dilemma of how to pull the Ko layers apart so one could be used essentially in isolation.

Further, it should be noted that, opposite to the Ko arrangement, the disclosed embodiments are such that mat, in the final product, is to be disposed over the top of the concrete block which is to be located below the mat. In Ko, the mat/block arrangement is arranged upside-down so that the mat passes under the block which is configured to be suspended above the ground. In this if excessive amounts of water were to be permitted to flow through the block, as would tend to be suggested by the rejection, the mat would tend to be separated from the block by the seepage. This would tend to deter the transfer of teachings which are alleged to be obvious in this situation.

4) The rejection of claims 24-26 under 35 USC § 103(a) as being unpatentable over Ko in view of Marshall et al. and further in view of Dall, is respectfully traversed.

In this rejection Dall is relied upon to teach the use of paper pulp as a water retainer, because Ko and Marshall et al. fail to suggest this type of usage. True, neither Ko nor Marshall et al. teach the use of paper pulp in the fiber layer 14 of Ko. However, there is a good reason. The fiber layer 14 of Marshall et al. is disclosed as itself being made of a water absorbent fiber 19. See column 6, lines 33-44. There is, therefore, no particular reason to consider this structure inadequate for its intended purpose and to add paper pulp to provide water storage characteristics, in that this water retention is already provided for by the disclosed structure of the seed map (note also the disclosure relating to the scrim layers) set forth in this reference.

5) The rejection of claim 30 under 35 USC § 103(a) as being unpatentable over Ko in view of Marshall et al. and further in view of Nogami et al. is respectfully traversed.

Nogami et al. is relied upon in connection with the claimed fiber aggregate outer layer which comprises a mat of a multiply needled, pressed fiber aggregate stack that is configured to have the intertwined fibers and the fibers that enter the concrete and interconnect the mat to the outer surface of the concrete block. While Nogami et al. may disclose multiply needled fiber aggregates, it does not explain how the fiber layer 14 of Marshall et al. can be extracted from the remaining layers, the (presumably) treated in accordance with Nogami et al. (before or after being possibly sprayed with rubber as per Proctor), used

alone and then expected to have fibers enter and interlock with the porous surface of a concrete block.

There is simply nothing that would lead the hypothetical person of ordinary skill to the purported obvious outcome.

Summary

In order to establish a *prima facie* case of obviousness, it is necessary to show that the hypothetical person of ordinary skill would, without any knowledge of the claimed subject matter and without any inventive activity, be motivated to arrive at the claimed subject matter given the guidance of the cited references when each is fully considered as statutorily required. It is submitted that the rejections have failed to establish a *prima facie* case wherein anything other than "its known so its obvious" type of rejection, has been advanced.

Further, as the Examiner knows, the person of ordinary skill in the art "thinks along the lines of conventional wisdom in the art and is not one who undertakes to innovate" *Standard Oil Co. v American Cyanamid Co.*, 227 USPQ2d 293, 298 (Fed. Cir. 1985). Clearly, a lot of "innovation" would be necessary before the multilayer structure of Marshall et al. could be relied upon to even vaguely suggest the claimed structure to a person of ordinary skill in possession of the Ko and Marshall et al. references.

It is also submitted that the Applicant has not attacked the references individually and that the reasons why a combination of the teachings would not be made, has been advanced. An improper resort to the citation of *In re Keller* (642 F.2d 413, 208 USPQ 871 (CCPA 1981)) is therefore requested. In fact, it is

submitted that the major thrust of the *In re Keller* decision is that "the test for obviousness is not whether the features of a secondary reference may be bodily incorporated into the structure of the primary reference, nor is it that the claimed invention must be expressly suggested in any one or all of the references. Rather, the test is what the combined teachings of the references would have suggested to those of ordinary skill in the art."

Conclusion

It is respectfully submitted that the claims are allowable over the art which has been applied in this Office Action. Favorable reconsideration and allowance of this application are courteously solicited.

Respectfully submitted,

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